

COVENANT OF DEED RESTRICTION

Recording Requested By:

California Highway Patrol
455 Eight Street
San Francisco, California

When Recorded, Mail To:

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Site Mitigation Branch

San Francisco Co Recorder's Office
Gregory Joseph Diaz, County Recorder
DOC - 96-F931479-00

Check Number 1978

REQD BY

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STP \$13.00!

Ttl Pd \$46.00

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COVENANT
TO RESTRICT USE OF PROPERTY

The "California Highway Patrol" Site
455 Eight Street
San Francisco, California

This Covenant and Agreement ("Covenant") is made on the 3 day of
February, 1997 ^{6 BSC} by the California Highway Patrol (CHP), State of
California ("Covenantor"), which is the owner of record of certain
property situated in the City and County of San Francisco, State of
California, described in Exhibit "A" attached hereto and incorporated
herein by this reference (the "Property"), and by the Department of Toxic
Substances Control (the "Department"). Covenantor and the Department
desire and intend that in order to protect the present and future public
health and safety, the Property shall be used in such a manner as to
avoid potential harm to persons or property which may result from

1 hazardous substances which have been deposited on the Property.

2
3 ARTICLE I

4 STATEMENT OF FACTS

5 1.01 Description of contamination. The Property is approximately
6 1.35 acres and is located on 455 Eight Street in the City of San
7 Francisco. The site has been a CHP facility since 1953. Prior to
8 redevelopment of the Property, soils were sampled and analyzed. The
9 analyses detected lead at levels of concern. The lead contamination
10 could have been a result of contaminated fill brought onto the Site. The
11 original building was demolished. The redevelopment consists of
12 construction a 13,600 ft² main building and a 1,500 ft² shop building.
13 Outside the perimeter of the buildings is an asphalt pavement which is
14 approximately 42,200 ft². The six-inch thick concrete foundation of the
15 main building (located in the middle section of the Property) and the
16 asphalt pavement will serve as soil covers and will prevent the lead from
17 migrating. Soil remediation at the Property was implemented during the
18 construction of the concrete foundation and the asphalt pavement (both
19 referred to hereinafter as "Cap").
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21

22 1.02 Health Effects. The potential routes of exposure to these
23 contaminants are through dermal contact, ingestion and inhalation of
24 dusts and particulates from on-site soil. The Cap will eliminate
25 generation of dusts and particulates from lead-affected soil and will
26 also prevent surface water from infiltrating into soils containing the
27 contaminants. However, should the potential routes of exposure to lead

1 not be minimized or eliminated, the potential human health effects
2 resulting from exposure are as follows:

3 Lead. Acute exposure to lead may produce fatigue, headache, aching
4 muscles and bones, gastrointestinal disturbance, sleep disturbance,
5 abdominal pain and decreased appetite. Chronic exposure can lead
6 to irreversible vascular sclerosis, irreversible brain damage,
7 tubular cell atrophy, interstitial fibrosis, and glomerular
8 sclerosis (Sax 1989).
9

10 1.03 Surrounding Land Use. The Property is bounded by the Highway
11 80 westbound offramp on the west, the Highway 80 eastbound onramp on the
12 east, a Caltrans parking lot on the north and 8th Street on the South.
13 Land uses surrounding the Property are commercial and light industrial.
14

15 ARTICLE II

16 GENERAL PROVISIONS

17 2.01 Provisions to Run with the Land. This Covenant sets forth
18 protective provisions, covenants, restrictions, and conditions
19 (collectively referred to as "Restrictions"), upon and subject to which
20 the Property and every portion thereof shall be improved, held, used,
21 occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each
22 and all of the Restrictions shall run with the land, and pass with each
23 and every portion of the Property, and shall apply to and bind the
24 respective successors in interest of Covenantor. Each and all of the
25 Restrictions are imposed upon the entire Property unless expressly stated
26 as applicable to a specific portion of the Property. Each and all of the
27

1 Restrictions are imposed pursuant to Health and Safety Code Section
2 25355.5 and run with the land pursuant to Health and Safety Code Section
3 25355.5. Each and all of the Restrictions are enforceable by the
4 Department.

5 2.02 Concurrence of Owners Presumed. All purchasers, lessees, or
6 possessors of any portion of the Property shall be deemed by their
7 purchase, leasing, or possession of such Property, to be in accord with
8 the foregoing and to agree for and among themselves, their heirs,
9 successors, assignees, agents, employees, and lessees of such owners,
10 heirs, successors, and assignees, that the Restrictions as herein
11 established must be adhered to for the benefit of future Owners and
12 Occupants and that their interest in the Property shall be subject to the
13 Restrictions contained herein.

14 2.03 Incorporation into Deeds and Leases. Covenantor desires and
15 covenants that the Restrictions set out herein shall be incorporated by
16 reference in each and all deeds and leases of any portion of the
17 Property.
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21 ARTICLE III

22 DEFINITIONS

23 3.01 Department. "Department" shall mean the California
24 Department of Toxic Substances Control and shall include its successor
25 agencies, if any.

26 3.02 Improvements. "Improvements" shall mean all buildings,
27 roads, driveways, regradings, and paved parking areas, constructed or

1 placed upon any portion of the Property.

2 3.03 Occupant. "Occupant" shall mean those persons entitled by
3 ownership, leasehold, or other legal relationship to the exclusive right
4 to occupy any portion of the Property.

5 3.04 Owner. "Owner" shall mean the Covenantor or its successors
6 in interest, including heirs and assigns, who hold title to all or any
7 portion of the Property.
8

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10 ARTICLE IV

11 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

12 4.01 Restrictions on Development and Use. Covenantor
13 promises to restrict the use of the Property as follows:

- 14 a. The Property shall be restricted for use as commercial and
15 industrial. No other use of the the Property shall be allowed
16 without the prior approval of the Department.
- 17 b. No drilling for drinking water, oil, or gas shall be permitted
18 on the Property.
- 19 c. No activities which will disturb the soil (e.g., excavation,
20 grading, removal, trenching, filling, earth movement, or
21 mining) shall be permitted on the Property without a Soil
22 Management Plan and a Health and Safety Plan submitted to the
23 Department for review and approval.
- 24 d. Any contaminated soils brought to the surface by grading,
25 excavation, trenching or backfilling shall be managed in
26 accordance with all applicable provisions of state and federal
27

1 law.

2 e. The Property shall be used in such a way as to preserve the
3 integrity of the Cap.

4 f. The Owner/Occupant shall maintain the asphalt pavement
5 pursuant to an Operation and Maintenance (O&M) Agreement
6 entered into between the Department and the owner. The
7 operation and maintenance of the asphalt pavement shall
8 consist of inspection of the condition of the asphalt on a
9 regular basis and repair of any deterioration observed during
10 the inspection according to the above mentioned O&M Agreement.

11 g. The Owner grants the Department an easement to the Property
12 for inspection, surveillance, monitoring, maintenance, and
13 other activities consistent with the purposes of this covenant
14 as deemed necessary by the Department in order to protect the
15 public health and safety.
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17 4.02 Conveyance of Property. The Owner(s) shall provide a thirty
18 (30) days advance notice to the Department of any sale, lease or other
19 conveyance of the Property or an interest in the Property to a third
20 person. The Department shall not, by reason of the Covenant, have
21 authority to approve, disapprove, or otherwise affect any sale, lease, or
22 other conveyance of the Property except as otherwise provided by law, by
23 administrative order, or by reason of this Covenant.
24

25 4.03 Enforcement. Failure of the Owner(s) to comply with any of
26 the requirements, as set forth in Paragraph 4.01, shall be grounds for
27 the Department, by reason of the Covenant, to require that the Owner(s)

1 modify or remove any Improvements constructed in violation of Paragraph
2 4.01. Violation of the Covenant shall be grounds for the Department to
3 file civil and criminal actions against the Owner(s) as provided by law.

4 4.04 Notice in Agreements. All Owners and Occupants shall execute
5 a written instrument which shall accompany all purchase, lease, sublease,
6 or rental agreements relating to the Property. The instrument shall
7 contain the following statement:

8 "The land described herein contains hazardous substances. Such
9 condition renders the land and the owner, lessee, or other
10 possessor of the land subject to requirements, restrictions,
11 provisions, and liabilities contained in Chapter 6.5 and Chapter
12 6.8 of Division 20 of the Health and Safety Code as well as by a
13 specific covenant of Deed Restriction. This statement is not a
14 declaration that a hazard exists."
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17 ARTICLE V

18 VARIANCE AND TERMINATION

19 5.01 Variance. Any Owner(s) or, with the Owner(s)' written consent,
20 any Occupant of the Property or any portion thereof may apply to the
21 Department for a written variance from the provisions of this Covenant.
22 Such application shall be made in accordance with Health and Safety Code
23 Section 25233.
24

25 5.02 Termination. Any Owner or, with the Owner's written consent,
26 any Occupant of the Property or any portion thereof may apply to the
27 Department for a termination of the Restrictions as they apply to all or

any portion of the Property. Such application shall be made in accordance with Health and Safety Code Section 25234.

5.03 Term. Unless modified or terminated in accordance with Sections 5.01 or 5.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE VI

MISCELLANEOUS

6.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

6.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: "Covenantor"

California Highway Patrol
State of California
455 Eight Street
San Francisco, California

Copy to:

F931479

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Site Mitigation Branch

6.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

6.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

6.05 Recordation. This instrument shall be executed by the Covenantor and by the Site Mitigation Branch Chief, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of San Francisco within ten (10) days of the date of execution.

1 IN WITNESS WHEREOF, the parties execute this Covenant as of the date set
2 forth above.

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5 OWNER: R. McArthur for
6 CALIFORNIA HIGHWAY PATROL

7 Title: CHIEF, ADMIN SERVICES DIVISION

8 Date: 1-3-96
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14 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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16
17 By: Barbara J. Cook
18 Barbara J. Cook, Chief
19 Site Mitigation Branch, Region 2

20 Date: 2-3-96
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1 STATE OF CALIFORNIA)
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F931479

On January 3, ¹⁹⁹⁶~~1995~~ before me, a Notary Public in and for State
of California, personally appeared F.G. Mc Carthy,
personally known to me ~~or proved to me on the basis of satisfactory~~
~~evidence~~ to be the person whose name is subscribed to the within instrument
and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized
capacity, and that by his/~~her~~ signature on the instrument the person, or
the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Cecynthia M. Lucas

Notary's Signature



1 STATE OF CALIFORNIA)
2 CONTRA COSTA)
3 COUNTY OF ~~SAN FRANCISCO~~)
4
5

6 On February 3, 199⁶, before me, a Notary Public in and for State
7 of California, personally appeared Barbara J. Cook, ~~personally known to me~~
8 ~~or~~ proved to me on the basis of satisfactory evidence to be the person
9 whose name is subscribed to the within instrument and acknowledged to me
10 that she executed the same in her authorized capacity, and that by her
11 signature on the instrument the person, or the entity upon behalf of which
12 the person acted, executed the instrument.

13
14 WITNESS my hand and official seal.



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Maryann Musetti

Notary's Signature

F931479

EXHIBIT A

IV-SF-68-SF
No. 4339-DDDESCRIPTION FOR PROPOSED DIRECTOR'S
DEED OF A PARCEL OF LAND IN THE
CITY AND COUNTY OF SAN FRANCISCO

COMMENCING at the most westerly corner of that parcel of land described in that Final Order of Condemnation recorded June 29, 1953 in Volume 6183 at page 144, Official Records of the City and County of San Francisco; thence along the southwesterly line thereof, S. 44°51'20" E., 245.41 feet; thence N. 45°08'40" E., 30.00 feet; thence from a tangent that bears N. 9°07'31" W., along a curve to the right with a radius of 1281.00 feet, through an angle of 15°55'19", an arc length of 355.98 feet; thence N. 44°51'20" W., 45.89 feet; thence S. 45°08'40" W., 156.11 feet; thence along a tangent curve to the left with a radius of 99.00 feet, through an angle of 32°15'45", an arc length of 55.75 feet; thence S. 12°52'55" W., 78.24 feet to the point of commencement.

CONTAINING 43,316 square feet, more or less, in addition to 2,872 square feet, more or less, lying within the bounds of Hayward Street.

EXCEPTING AND RESERVING unto the State of California any and all rights of ingress to or egress from the land herein conveyed over and across the courses described above with the lengths of 30.00 feet, 355.98 feet, 45.89 feet, 156.11 feet, 55.75 feet and 78.24 feet.

It is the purpose of the foregoing exception and reservation to provide that no easement of access shall attach or be appurtenant to the property hereby conveyed, by reason of the fact that the same abuts upon a public way and upon a State highway, with access only to the State highway being restricted.

SUBJECT TO:

1. Easement for laying, maintaining, and repairing a 4 inch water pipe and a 1-1/4 inch air pipe as granted by agreement J. J. Collins with Thomas Mirk recorded November 4, 1915 (50 Civ. 188). The location of said pipe is not disclosed. Assigned by Thomas Mirk and wife to Consumers Ice Company, a corporation by assignment dated September 12, 1916, recorded December 28, 1916, (54 Civ. 31).